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PROG 175/83
AMB:FVORTIZ
POL:JFKING:MH
DCM:JABUSHNELL
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AMEMBASSY BUENOS AIRES
SECSTATE WASHDC
INFO AMEMBASSY ASUNCION
AMEMBASSY BRASILIA
AMEMBASSY LA PAZ
AMEMBASSY LONDON
AMEMBASSY MONTEVIDEO
AMEMBASSY SANTIAGO
USCINCSO QUARRY HEIGHTS PN
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CINCLANT ALSO FOR POLAD

E.O. 12356: DECL: OADR
TAGS: PGOV, AR
SUBJECT: THE TRIALS OF THE MILITARY

REF: BUENOS AIRES 8914

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

☒ Release ☐ Excise ☐ Deny

Exemption(s):

~~Declassify:~~ () In Part ~~(X)~~ In Full ~~RECONTROL~~

() Classify as __ () Extend as __ () Downgrade to __

Date _____ Declassify on _____ Reason _____

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1. SUMMARY. ALL NINE MEMBERS OF THE EARLY JUNTAS (1976-82), INCLUDING THREE FORMER PRESIDENTS OF THE REPUBLIC, WERE ARRAIGNED OVER THE HOLIDAYS. THE CHARGES--KIDNAPPING, TORTURE AND HOMICIDE--WERE BROUGHT BY THE NEW COMMANDER-IN-CHIEF OF THE ARMED FORCES, PRESIDENT ALFONSIN. FORMER PRESIDENT BIGNONE AND TWO MEMBERS OF THE LAST JUNTA (1982-83), WHICH TOOK OVER IN THE FALKLANDS DISASTER, WERE EXEMPTED FROM ALFONSIN'S INDICTMENT. BUT THAT DID NOT PREVENT THEM, TOO, FROM TUMBLING INTO THE COILS OF THE LAW, ENMESHED IN PRIVATE SUITS BROUGHT AGAINST THE MILITARY. THE PLAINTIFFS ARE TENACIOUS PEOPLE WHO NOW HAVE THE HELP OF A BLUE-RIBBON CITIZENS GROUP, COMMISSIONED LAST MONTH BY ALFONSIN TO INVESTIGATE AND REPORT ON THE DIRTY WAR BY MID-YEAR. THIS TELEGRAM IS A REFERENCE POINT FOR THE LITIGATION INITIATED SO FAR BY THE ALFONSIN GOVERNMENT AND BY PRIVATE PARTIES. ONLY AS THE JUDICIAL SYSTEM GETS INTO THE WORK WILL IT BE POSSIBLE TO INTERPRET THE SIGNIFICANCE. END SUMMARY.

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2. TUESDAY THE 13TH FOR HISPANICS CAN BE EVERY BIT AS ILL-STARRED AS FRIDAY THE 13TH FOR SUPERSTITIOUS ANGLOS. ALFONSIN'S THUNDERBOLT ORDERING MILITARY COURT TRIALS FOR THE FIRST THREE JUNTAS WAS THEREFORE A "MARTES TRECE" SURPRISE, COMING AS IT DID ON TUESDAY, DECEMBER 13, HIS FOURTH DAY IN OFFICE (REFTEL). IT WAS FOLLOWED DECEMBER 28 BY DEFENSE MINISTER BORRAS' ORDER TO THE ARMED FORCES SUPREME COUNCIL TO START PROCEEDINGS AGAINST THE NINE, ALL AT ONE TIME OR OTHER CINCS OF THEIR RESPECTIVE SERVICES, FOR HAVING USED "METHODS AND PROCEDURES" IN THE DIRTY WAR THAT WERE "MANIFESTLY ILLEGAL."

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3. THE SUPREME COUNCIL, HEADED BY AN AIR FORCE BRIGADIER GENERAL NAMED LUIS MARIA FAGES, SCHEDULED APPEARANCES OF THE ACCUSED FOR THE 29TH AND 30TH OF DECEMBER TO HEAR THE CHARGES. ALL BUT ONE CAME-- VIDELA, VIOLA AND GALTIERI, WHO WERE BOTH PRESIDENTS AND ARMY COMMANDERS AT ONE TIME; LAMBRUSCHINI AND ANAYA FROM THE NAVY, AND THE THREE AIR FORCE LEADERS, AGOSTI, GRAFFIGNA AND LAMI DOZO. ONLY FORMER NAVY CHIEF MASSERA FAILED TO APPEAR; HE IS BEING HELD WITHOUT BAIL IN A CIVIL CASE BROUGHT EIGHT MONTHS AGO INVOLVING THE DISAPPEARANCE OF A BUSINESS ASSOCIATE.

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4. MULTIPLYING DISCOVERIES OF UNIDENTIFIED BODIES IN UNMARKED GRAVES WERE A GRISLY COUNTERPOINT TO THE SPREAD OF THE ARMED SERVICES' PROBLEMS. SCORES OF FINDS WERE REPORTED AND HIGHLY PUBLICIZED OVER THE HOLIDAYS IN CEMETERIES AND OTHER BURIAL SITES IN THE BUENOS AIRES AND LA PLATA AREAS. CIVILIAN JUDGES WERE LEADING THE LOCATION AND EXHUMATION EFFORTS, AND IT WAS GENERALLY ASSUMED THESE WERE THE MILITARY EXCESSES WHICH, UNTIL NOW, IT SEEMED THE COUNTRY EITHER DID NOT BELIEVE OR WANT TO KNOW ABOUT. PRESIDENT ALFONSIN MEANTIME SIGNED LEGISLATION REPEALING THE SEPTEMBER AMNESTY WHICH THE LAST JUNTA HAD GRANTED TO ITS THREE PREDECESSORS. THE CONTROVERSIAL MEASURE WAS NOT ONLY DECLARED UNCONSTITUTIONAL BUT "NULL." BY DECLARING THE AMNESTY A NULLITY, AUTHORS OF THE REPEAL HOPE TO DENY THE ACCUSED ANY RECOURSE TO IT AS THE "MOST BENIGN LAW."

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5. ACTION IN THE CIVIL COURTS AGAINST MONTONERO AND ERP TERRORISTS FOR THE SAME OFFENSES DATING BACK TO 1973 BEGAN AS THE NEW ATTORNEY GENERAL, JUAN OCTAVIO GAUNA, BEGAN PREPARING THE STATE'S CASES. ONLY ONE INDIVIDUAL CITED IN ALFONSIN'S DECEMBER 13 INDICTMENT, FORMER CORDOBA GOVERNOR RICARDO OBREGON CANO, IS IN THE COUNTRY. HIS EXPERIENCE SINCE RETURNING LAST MONTH SHOULD DETER OTHER TERRORISTS-IN-EXILE FROM TRYING TO COME HOME LEGALLY. OBREGON CANO WAS ARRESTED ON AN OLD POLITICAL SLANDER CHARGE AS SOON AS HE ARRIVED AND IS BEING HELD UNTIL FULL PARTICULARS AGAINST HIM ARE DRAWN UP. BUT EVEN IF THE CIVILIAN TERRORIST TRIALS EVER GET OFF THE GROUND, THEY COULD NEVER MATCH THE DRAMA OF THE TRIALS INVOLVING HIGH-RANKING OFFICERS NOW UNDERWAY.

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6. BESIDES THE SUPREME COUNCIL PROCEEDINGS AGAINST LEADERS FROM THE 1976-82 ERA, BIG NAMES FROM THE JUNTA WHICH JUST LEFT OFFICE ARE BEING CAUGHT UP IN INVESTIGATIONS OF SEVERAL CELEBRATED DISAPPEARANCES. FEDERAL JUDGES HAVE TAKEN TESTIMONY FROM GENERAL NICOLAIDES AND ADMIRAL FRANCO IN THE 1977 KIDNAPPING OF INES OLLEROS, A COMMUNIST ACTIVIST. FORMER PRESIDENT BIGNONE, WHO ALSO MAY BE CALLED TO TESTIFY IN THE OLLEROS CASE, FACES INVESTIGATION IN THE DISAPPEARANCE OF TWO YOUNG ARMY CONSCRIPTS, BOTH ALLEGED TO HAVE BEEN COMMUNISTS ASSIGNED TO THE MILITARY COLLEGE WHEN BIGNONE COMMANDED IT; COMMUNIST PARTY YOUTH FORMALLY DENOUNCED THE FORMER PRESIDENT'S RESPONSIBILITY IN THE CASE ON JANUARY 3. BIGNONE ALSO UNDERWENT THE INDIGNITY OF BEING "IMPLICATED BUT NOT INDICTED" IN THE KIDNAP-DISAPPEARANCE OF PHYSICIST ALBERTO GIORGI FROM THE NATIONAL TECHNOLOGICAL INSTITUTE FIVE YEARS AGO. BIGNONE WAS THUS THROWN TOGETHER WITH SOME OF THE MORE NOTORIOUS HARDLINERS OF THE DIRTY WAR WHO, AS "IMPUTADOS" IN THE GIORGI CASE, HAVE ALL BEEN BARRED FROM LEAVING THE COUNTRY. BIGNONE BEGGED OFF FROM WHAT WOULD BE HIS FIRST COURT APPEARANCE DECEMBER 29 BECAUSE OF A SICK WIFE.

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7. INVESTIGATIONS ARE SPREADING LIKE INK STAINS IN OTHER WELL-KNOWN DISAPPEARANCE AND MURDER CASES AS COURTS ALL OVER THE COUNTRY ARE GETTING INVOLVED. HUMAN RIGHTS ORGANIZATIONS MEANTIME KEEP THE PRESSURE UP IN THOSE AREAS WHERE THEY SEE ALFONSIN TO BE A BIT SHY. MUCH COMPLAINING IS HEARD FROM THE HUMAN RIGHTS MOVEMENT, ONE OF WHOSE PIONEER LEADERS WAS ALFONSIN HIMSELF, ABOUT THE PRESIDENT'S TIMIDITY. THE JUNTAS, IN THE CRITICS' VIEW, SHOULD BE TRIED BY CIVILIAN MAGISTRATES, NOT IN MILITARY COURTS; THE POSSIBILITY THAT THE COUNCIL'S FINAL DECISIONS CAN BE APPEALED IN CIVIL COURT (BY EITHER PARTY) IS NOT ENOUGH. THE CRITICS ALSO PICK AT ALFONSIN'S SELECTIONS FOR THE BLUE-RIBBON CITIZENS PANEL INVESTIGATING THE DIRTY WAR; THEY WOULD PREFER A JOINT SENATE-HOUSE INVESTIGATION OF THE DISAPPEARED. THEY CAUTIOUSLY APPLAUD ALFONSIN'S QUICK ACTION, BUT THEY ARE CONCERNED IT IS NOT SWEEPING ENOUGH. THEY POINT TO THE SELECTION OF GENERAL ARGUINDEGUY AS ARMY CHIEF OF STAFF AS NOTHING MORE THAN RECONSTITUTION OF THE OLD SYSTEM WITH DIFFERENT PEOPLE; ARGUINDEGUY'S INDUCTION REMARKS, AND THE PRESENCE OF VIDELA AND VIOLA AT THE CEREMONY, ARE ALL PROOF THAT IS NEEDED FOR MANY IN THE MOVEMENT.

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8. ALFONSIN AND HIS PEOPLE SEEM TO UNDERSTAND THAT WITH ALL HIS BOLD MOVES, THEY CANNOT ALLOW THEMSELVES TO BE PUSHED TOO FAR, TO RESPOND, OR BE SEEN TO BE RESPONDING, TO THE SOMEWHAT INCHOATE CLAIM OF THE MILITANTS FOR A SPECIES OF "POPULAR JUSTICE." WHAT THE NEW ADMINISTRATION SEEMS TO BE DOING IS STICKING TO ITS CAMPAIGN PROMISE: THOSE RESPONSIBLE FOR PLANNING AND EXECUTING THE DIRTY WAR, AND THOSE WHO COMMITTED EXCESSES, WILL BE MADE ACCOUNTABLE; THOSE WHO LEGITIMATELY FOLLOWED ORDERS WILL NOT. THE PROSCRIPTION IS VAGUE, BUT SO IS THE PROBLEM IT WAS DESIGNED TO DEAL WITH--THAT IS, THE MILITARY LEADERSHIP'S ASSUMPTION OF COLLECTIVE RESPONSIBILITY FOR THE DIRTY WAR IN ITS "FINAL REPORT" OF LAST APRIL. NOW, PRESUMABLY COMES THE TEST OF INDIVIDUAL CULPABILITY, OR EXPOSURE TO PUNISHMENT, AGAINST THAT GENERAL ASSERTION OF RESPONSIBILITY.

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9. ADMITTEDLY, ALL OF THIS COULD SINK INTO A SWAMP
OF LEGALISMS AND MORAL JUDGMENTS. IT CAN ALSO CAUSE
SERIOUS POLITICAL PROBLEMS UNLESS ALFONSIN MAKES A
CLEAR DISTINCTION BETWEEN HIS INDICTMENT OF THE TOP
PEOPLE RESPONSIBLE AND HIS SUPPORT FOR THE INSTITUTIONS
OF THE ARMED FORCES THEMSELVES. ORTIZ**

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